IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.O.C.P. No.238 of 2005
Date of Decision:- 05.12.2006

Anil Kumar ....Petitioner
through
Mr.P.S.Khurana, Advocate

vs.

Sh.Jai Singh Gill & ors. ....Respondents
through
Mr.G.S.Cheema, Sr.DAG, Punjab

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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SURYA KANT, J.

This order of mine shall dispose of C.O.C.P.No.1626 of 2004 and C.O.C.P.No.238 of 2005 as common questions of facts and law are involved. For the sake of brevity, the facts are being taken from C.O.C.P.No.238 of 2005.

[2] The petitioner, a physically handicapped person, competed for selection to PCS (Executive Branch) in an examination held in the year 2003. The petitioner was selected and his name was recommended at merit No.2 in the physically handicapped category for appointment. He was asked to appear for the medical examination which he did. The petitioner, however, was not offered appointment. He approached this Court by way of C.W.P.No.18405 of 2004 which was disposed of on 30.11.2004 with a direction to the respondents to decide his pending representation within one month, by passing a speaking order and after granting him an opportunity of being heard.

[3] Alleging non-compliance of the above-stated order, this contempt petition has been filed.

[4] In response to the show cause notice, an affidavit has been filed by Mr.Jai Singh Gill, the then Chief Secretary to Government of Punjab and along with that he has appended copy of the order dated 12.5.2005 (Annexure -1) vide which the petitioner's representation has been decided.

[5] It is revealed from the aforesaid order that one candidate, namely, Pushpinder Paul has filed C.W.P.No.7377 of 2003 in this Court. There appears to be some dispute regarding his eligibility in the handicapped category. Vide an interim order dated 16.10.2003 passed in **Pushpinder Paul's case**, this Court has directed that he be considered as a physically handicapped candidate in the process of selection but "his result may, however, be retained in a sealed cover."

[6] The then Chief Secretary to Govt. of Punjab has not seriously disputed the petitioner's selection under the "physically handicapped" category. He, however, has expressed his inability to appoint the petitioner as according to him, it could only be done after determining his exact placement in the merit list of physically handicapped candidates, which would necessarily involve determination of merit of the aforesaid Pushpinder Paul also. Obviously, it cannot be done in violation of the interim order dated 16.10.2003 passed by this Court in Pushpinder Paul's case.

[7] From the above resume of facts, it is difficult to hold that the respondents have wilfully and deliberately failed to comply with the orders passed by this Court.

[8] However, there appears to be some substance in the contention

of learned counsel for the petitioner that since the petitioner's eligibility in physically handicapped category is not at all in dispute and his name has already been recommended for appointment, no prejudice should be caused to him on account of an interim order passed by this Court in **Pushpinder Paul's case**.

[9] From the above resume of facts, it is apparent that the petitioner is deprived of appointment despite his selection and un-questioned eligibility due to an interim order passed by this Court in the case of a candidate whose eligibility is in dispute and placement in merit is not known.

[10] In order to ensure the faithful compliance of order dated 16.10.2003 passed by this Court in **Pushpinder Paul's case** and with a view to protect the interest of the said candidate if his eligibility is finally accepted by this Court, it appears that the only workable solution can be to direct the petitioner as well as the other candidate selected under the physically handicapped category, to give an undertaking in writing before the Chief Secretary, Punjab that they are ready and willing to accept the posts lower than that of PCS (Executive Branch) i.e.(i) the post of Assistant Registrar (Co-operative), and (ii) the Employment Officer which were also reserved for the candidates of their category. The single post in PCS (Executive Branch) can be kept vacant for the time being till the claim of Pushpinder Paul is determined by this Court. Assuming that Pushpinder Paul's claim is accepted and he is held eligible as a handicapped candidate, the aforesaid vacant post shall thereafter can be filled up by appointing the candidate whosoever is highest in merit in the physically handicapped category.

[11] The orders passed by this Court in two sets of cases are accordingly clarified in the manner referred to above. Consequently, these contempt petitions are disposed of with a clarificatory direction to the Chief Secretary to Government of Punjab to take further necessary action in terms of the above-made observations/directions within a period of two months from the date of receipt of certified copy of this order.

Rule discharged.

December 05, 2006 **(SURYA KANT)**
poonam **JUDGE**